

DON D. ARMENTROUT

IBLA 88-566

Decided November 16, 1990

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting noncompetitive lease application WYW-112669.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease

When no acceptable bids are received at an oral auction of oil and gas leases the first qualified person making application for the lease within 2 years from the date of the competitive sale is generally entitled to a lease. It is well within the scope of the discretion-ary authority granted to the Department to hold a drawing to establish the priority of the various applications if the Bureau of Land Management receives more than one application for the same tract on the same day.

APPEARANCES: Don D. Armentrout, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Don D. Armentrout (Armentrout) has appealed from a June 27, 1988, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting noncompetitive oil and gas lease application WYW-112669, filed by Armentrout on June 2, 1988.

On June 1, 1988, BLM held a competitive lease sale offering to lease a number of parcels of land in Wyoming to the highest oral bidder, pursuant to the Federal Onshore Oil and Gas Leasing Reform Act of 1987, § 5102, P.L. 100-203, 30 U.S.C. § 226 (1988). Parcel No. WY-8806-526 (Parcel 526) 1/ was offered, but received no bids.

1/ Parcel 526 consisted of lots 3 and 4, E½ SW¼, sec. 19; lot 1, E½, E½ W½, sec. 30; E½ NW¼, sec. 31; and SW¼, sec. 33, T. 31 N., R. 84 W.; and N½ N½ sec. 25, T. 31 N., R. 85 W., sixth principal meridian, Wyoming.

On June 2, 1988, five noncompetitive lease offers were submitted for lands listed in Parcel 526. One of the five offers was submitted by Armentrout. 2/ Having received more than one offer on the same day, BLM determined priority by conducting a drawing in the manner set out in 43 CFR 1821.2-3. 3/ First priority was awarded to another party and Armentrout was then notified that his offer was being rejected and the other party was being awarded the lease. Armentrout appealed.

In his statement of reasons Armentrout sets out a chronological description of the events leading to his appeal. Beginning on or about November 6, 1987, and continuing to April 12, 1988, Armentrout sought to have the lands in Parcel 526 offered for competitive leasing. The action taken by him included a February 27, 1988, letter nominating the lands for competitive sale, 4/ and a February 29, 1987, letter requesting that the lands be placed on the list of lands offered for competitive leasing.

Armentrout attended the June 1, 1988, sale but did not submit a bid for Parcel 526. He then submitted his noncompetitive application, but it was apparently submitted after closing, as it was date stamped the next day. 5/

[1] The Federal Onshore Oil and Gas Leasing Reform Act of 1987 made the award of oil and gas leases to the highest bidder at an oral auction the primary vehicle for issuing oil and gas leases. The procedure for awarding leases using the competitive bidding procedure is found at 30 U.S.C. § 226(b)(1)(A) (1988), and the procedure to be used when no acceptable competitive bids are received is found at 30 U.S.C. § 226(c) (1988). Section 226(c) generally provides that a qualified person who applies for the lease within 2 years from the date of the competitive sale will be entitled to a lease. See also 43 CFR 3110.1(b).

The notice of the competitive sale held on June 1, 1988, included a statement that, if BLM were to receive more than one application for a parcel which had not received a minimum bid at the competitive sale, the procedures at 43 CFR 1821.2-3 would be used to determine the priority of the applications. Under the procedure set out in that section, a drawing is held to establish priority.

As previously noted, Armentrout did not bid on Parcel 526 and no other bids were received. The next day five applications were filed and a drawing

2/ Armentrout submitted an offer for all of Parcel 526 except the lands in T. 31 N., R. 85 W.

3/ Under this section, two documents are considered as simultaneously filed when they are delivered and received by the proper office at the same time.

4/ He also submitted \$12,781.50, which was returned to him on Mar. 1, 1988.

5/ All five of the offers were date stamped as having been received at 9:30 a.m. on June 2, 1988. See 43 CFR 1821.2-2(d).

was subsequently held. Although Armentrout clearly demonstrated interest in the lands described as Parcel 526, and in all likelihood caused that parcel to be placed on the list of parcels offered at the June 1, 1988, competitive oil and gas lease sale, none of his actions prior to June 2, 1988, established priority for receipt of an oil and gas lease for those lands. 6/

The priority among applicants who had filed on June 2, 1988, was determined by a drawing, and another applicant was awarded higher priority. The action taken by BLM was well within the scope of the discretionary authority granted to the Department, and no violation of applicable statutes or regulations has been demonstrated on appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

6/ Armentrout and the four other applicants established priority over all who might have subsequently filed an application to lease the same lands.